

Attorney Docket No.:T7105(C)  
Serial No.:10/581,292  
Filed: June 1, 2006  
Confirmation No.: 3161

## **REMARKS**

### ***Amendments to the Claims***

Independent claims 1 has been amended without prejudice to recite preferred embodiments of applicants' invention that are more clearly distinguished from the prior art. The following additional limitations are included:

Amended claim 1 now incorporates the limitations recited in dependent claim 2 that the neutralized fatty acid is present in the composition at 2 to 15 wt%.

Amended claim 1 now incorporates the limitation that the cosmetic composition is suitable for forming a skin cream or lotion on hydration as disclosed in the abstract; page 2, lines 23-25, and Examples 1-3 on page 12-14.

Amended claim 2 specifies that the level of neutralized fatty acid in the composition is 2.5 to 8 wt% as disclosed on page 5, line 25.

Amended claim 10 now limits the product formed after hydration of the composition of claim 1 to a skin cream or lotion.

Amended claim 5 now specifies that the chainlength of fatty acid recited in claim 1 is 16 to 18 carbon atoms thereby removing multiple ranges and making the claim more definite.

Amended claims 1, 8 and 9 corrected informalities in reciting Markush groups.

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***Claim Rejections – 35 USC § 102***

Claims 1, 3-8, 10 and 11 were rejected under 35 USC 102(b) as being anticipated by either Farrell et al (US 6,630,432) or Crookham et al (US 6,576, 228). Applicants respectfully request the Examiner to reconsider and withdraw this rejection in light of the above amendments and following remarks.

Claims 2 was held by the Examiner to be novel in the latest Office Action over both Farrell et al and Crookham et al. Applicants' assume that amended claim 1 is novel over these references at least because it now incorporates the limitations recited in claim 2. Since claims 3-8, 10 and 11 depend from amended claim 1, these claims are also not anticipated by Farrell et al or Crookham et al.

***Claim Rejections – 35 USC § 103***

Claims 2, 9 and 12 were rejected under 35 USC §103(a) as being unpatentable over Farrell et al (US 6,630,432). Applicants respectfully request the Examiner to reconsider the rejection in view of the above amendments and following remarks.

Farrell et al is directed to bars comprising primarily fatty acid soap as cleansing agent which also contain salts of alpha-hydroxy acids (e. g., sodium lactate) (column 1, lines 8-13). Farrell et al teaches soap bars containing 7-25% water (column 2, line37) ; 40-95% of C12 to C24 fatty acid soap (e.g., fatty acid neutralized by an inorganic base) (column 3, line 53); 0-15% of monoglyceride (e.g., glycerol monostearate) (column 4, line 26), 0-15% free fatty acid (column 4, line 28-30); and 2-15% of salts of  $\alpha$ - hydroxyl acids (column 4, lines 8-10).

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All the soap bar examples disclosed by Farrell contain 67% to 77% neutralized fatty acid, i.e., soap (table spanning columns 5-6).

In contrast, applicants' invention is directed to a substantially anhydrous cosmetic composition that is suitable for forming a skin cream or lotion when it is hydrated and mixed with water. Applicants discovered specific combinations of fatty acid, fatty acid neutralized with an inorganic base, and specific structurants that when formed into a solid in a particular manner provides compositions which easily hydrate (e.g., simple mixing with water) to form a smooth skin cream or lotion.

At least the following elements of applicants' amended claim 1 are not disclosed either explicitly or implicitly by Farrell et al:

- *from 2 to 15 wt % fatty acid neutralized by an inorganic base.* Farrell et al discloses soap bar containing "primarily soap": specifically 40-95% of fatty acid neutralized by an inorganic base. Thus, the minimum level of neutralized fatty acid relevant to the soap bars of Farrell et al is 2.7 time higher than the maximum level used by applicants' in hydratable skin cream and lotion precursor compositions.

- *wherein the cosmetic composition is suitable for forming a skin cream or lotion on hydration.* The products disclosed by Farrell are soap bars. These products when hydrated, form lathering mixtures which are used to clean the skin. The products are applied to skin and then are rinsed from the skin with water. In contrast to liquors formed by hydrating soap bars, skin creams and lotions are applied to the skin and not rinsed, i.e., they are leave-on products. Not only are Farrell et al silent with regard to compositions that are suitable as skin creams and lotion after hydration, the compositions disclosed by Farrell et al are intrinsically unsuitable for this purpose because they would irritate the skin

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if applied to the skin and not rinsed. In fact, one method to quantify the potential irritation of soaps is the occluded patch test where a soap solution is applied to the skin and not rinsed.

Applicants' respectfully submit that a person of ordinary skill in the art would not have been motivated to explore drastically reduced soap level that are so far outside the lower limit recited by Farrell et al in order to "obtain desired cleansing and lathering properties of the composition" as asserted in the Office Action. Applicants' submit that a person of ordinary skill in the art (B.S. chemist with 3-5 years of product development experience) would have recognized that both lathering and cleansing properties of the soap bar would drastically deteriorate at these low levels of soap and that the invention would become inoperative for its intended purpose. Since, no application for the composition is taught by Farrell et al beyond soap bars for cleaning skin, there would be no reason to have selected soap levels so far outside the scope taught by Farrell et al.

Farrell et al is directed at the problem of developing bars comprising primarily fatty acid soap as cleansing agent which also contain salts of alpha-hydroxy acids. This is quite distinct from the problem addressed by applicants' technology, namely developing a composition that is easily hydrated to form a skin cream or lotion. Absent a disclosure of the elements and intrinsic features of applicants' compositions discussed above, (e.g., low level of neutralized fatty acid and overall suitability for forming a skin cream or lotion upon hydration) the reference does not present a *prima facie* case of obviousness.

Amended claims 2, 9 and 12 depend from claim 1 and are also non-obvious from the teachings of Farrell et al since claim 1 is non-obvious.

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Amended claims 2, 5 and 10 are even further removed from the teachings of Farrell et al.

Amended claim 2 specifies that the amount of neutralized fatty acid is 2.5-8 wt%. Thus, the minimum level relevant to the soap bars of Farrell et al is 4 times higher than the maximum level used by applicants in hydratable skin cream and lotion precursor compositions.

Amended claim 5 specifies that the fatty acid (both free and neutralized fatty acid) has a hydrocarbon chain length of from 16 to 18 carbon atoms. Such soaps have high Kraft temperatures, do not form micelles in water at ordinary temperature and consequently do not lather well. A person of ordinary skill in the art would not have chosen such chainlengths as the sole soap component.

Amended claim 10 specifies that the process of hydrating a composition according to claim 1 leads to the formation of a skin cream or lotion. As discussed above, the only compositions disclosed by Farrell et al intrinsically form a hydrated product that is not a skin cream or lotion, i.e., it is a surfactant solution.

In view of the above amendments and remarks, applicants respectfully request the Examiner to reconsider and withdraw the 103(a) rejection over Farrell et al (US 6,630,432).

Claims 2 and 12 were rejected under 35 USC §103(a) as being unpatentable over Crookham et al (US 6,576, 228). Applicants respectfully request the Examiner to reconsider the rejection in view of the above amendments and following remarks.

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Crookham et al is directed to personal wash compositions which deposit high levels of sunscreen (SPF >2) while maintaining good lather. Enhanced deposition is found from both bar and liquid compositions and is based on the solubility or non-solubility of the sunscreen used (Column 1, lines 7-13). Crookham et al teaches personal washing bars containing 1-15% water (column 3, line 52); 20-85% of a fatty acid soap (neutralized fatty acid) (column 3, line 21); 0-15% free fatty acid (column 3, line 27); 0-40% glycerol monostearate (Column 3, line 31); 0.1% to 10% sunscreen agent (column 3, line 33); and other cosmetic additives.

In contrast, applicants' invention is directed to a substantially anhydrous cosmetic composition that is suitable for forming a skin cream or lotion when it is hydrated (e.g., mixed with water). Applicants discovered specific combinations of fatty acid, fatty acid neutralized with an inorganic base, and specific structurants that when formed into a solid in a particular manner provides compositions which is easily hydrated to form a smooth skin cream or lotion.

At least the following elements of applicants' amended claim 1 are not disclosed either explicitly or implicitly by Crookham et al:

- *from 2 to 15 wt % fatty acid neutralized by an inorganic base.* Crookham et al discloses personal washing bars 20-85% of fatty acid neutralized by an inorganic base. Thus, the minimum level relevant to the washing bars of Crookham et al is 1.35 time higher than the maximum level used by applicants' in hydratable skin cream and lotion precursor compositions.

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- *wherein the cosmetic composition is suitable for forming a skin cream or lotion on hydration.* The products disclosed by Crookham et al are soap bars. These products when hydrated form lathering mixtures which are used to clean the skin and then are rinsed from the skin with water. In contrast to liquors formed by hydrating personal washing bars, skin creams and lotions are applied to the skin and not rinsed, i.e., they are intended as leave-on products. Not only are Crookham et al silent with regard to compositions that are suitable as skin creams and lotion after hydration, the compositions disclosed by Crookham et al are intrinsically unsuitable for this purpose because they would irritate the skin when applied to the skin and not rinsed. In fact, one method to quantify the potential irritation of soaps and detergent bars is the occluded patch test where a solution is applied to the skin and not rinsed.

Applicants' respectfully submit that a person of ordinary skill in the art would not have been motivated to explore drastically reduced soap level that are so far outside the lower limit recited by Crookham et al in order to "obtain desired cleansing and lathering properties of the composition" as was asserted in the Office Action. Applicants' submit that a person of ordinary skill in the art (B.S. chemist with 3-5 years of product development experience) would have recognized that both lathering and cleansing properties of the soap bar would drastically deteriorate at these low levels of soap and that the invention would become inoperative for its intended purpose. Since, no application for the composition is taught by Crookham et al beyond its normal use as a cleansing bar, there would have been no reason to select soap levels so far outside the scope taught by Crookham et al

Crookham et al is directed at the problem of developing personal washing bars that deposit sunscreens during normal use (rinse-off). This is quite distinct from the problem addressed by applicants' technology, namely developing a composition that is easily

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hydrated to form a skin cream or lotion. Absent a disclosure of the elements and intrinsic features of applicants' compositions discussed above, (e.g., low level of neutralized fatty acid and overall suitability for forming a skin cream or lotion upon hydration) the reference does not present a *prima facie* case of obviousness.

Amended claims 2 and 12 depend from claim 1 and are non-obvious from the teachings of Crookham et al since claim 1 is non-obvious.

Amended claims 2, 5 and 10 are even further removed from the teachings of Crookham et al.

Amended claim 2 specifies that the amount of neutralized fatty acid is 2.5-8 wt%. Thus, the minimum level relevant to the soap bars of Crookham et al is 2.5 times higher than the maximum level used by applicants in hydratable skin cream and lotion precursor compositions.

Amended claim 5 specifies that the fatty acid (both free and neutralized fatty acid) has a hydrocarbon chain length of from 16 to 18 carbon atoms. Such soaps do not lather well and would not have been used by a person of ordinary skill in the art as the sole soap component for the bar disclosed by Crookham et al.

Amended claim 10 specifies that the process of hydrating a composition according to claim 1 forms a skin cream or lotion. As discussed above, the only compositions disclosed by Crookham et al intrinsically form a hydrated product that is not a skin cream or lotion.

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In view of the above amendments and remarks, applicants respectfully requests the Examiner to reconsider and withdraw the 103(a) rejection over Crookham et al (US 6,576, 228).

In light of the above amendment and remarks, applicants respectfully request that the application be allowed to issue.

If a telephone conversation would be of assistance, Applicant's undersigned agent invites the Examiner to telephone at the number provided.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Michael P. Aronson", written over a horizontal line.

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